

# Overview of the Idaho Education Network (IEN) Contracting Process

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## Request for Proposals (RFP)

The development of requirements for the RFP began with a Request for Information from industry suppliers in July and August 2008.

The RFP made clear that the State of Idaho desired a contract with an industry partner or partners to establish a long-term relationship to design and implement the IEN, and that a parallel effort would migrate existing State of Idaho Customers from IdaNet to a new backbone under IEN contracts.<sup>4</sup>

The State reserved the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part<sup>2</sup> and stated that any resulting contract from this solicitation may be awarded to up to four providers.<sup>3</sup>

## RFP Responses

Responsive bids on the IEN Request for Proposals were submitted by Education Networks of America, Qwest and Verizon.<sup>4</sup>

Education Networks of America had several providers that they intended to partner with if awarded the IEN contract. They included CenturyLink, IRON, Cable One, INX and Syringa.<sup>1</sup>

Qwest also listed Syringa, as well as others, as its partners.<sup>3</sup>

Syringa did not submit a proposal and has never been a “bidder” for IEN goods and services. Syringa admitted in the lawsuit and the Supreme Court confirmed that Syringa was not a bidder and does not have any rights that a bidder would have.<sup>1</sup>

## Contract Award

After evaluation of the proposals by six (6) evaluators, none of whom were Administration staff, Education Networks of America received the most points, Qwest received the second-most points and Verizon received the least points. It was the evaluators’ recommendation to Administration that the contract be awarded to both Education Networks of America and Qwest given their respective strengths, as reflected in their proposals.<sup>3</sup>

After review of the evaluator’s recommendation and discussion with Purchasing,<sup>3</sup> Administration awarded Qwest and Education Networks of America open contracts [statewide blanket purchase order] on January 28, 2009.<sup>4</sup>

These awards were for the same property consistent with Idaho Code 67-5718A(1). The contracts were awarded for all services covered by the Request for Proposals, which included both E-Rate eligible services and other services including the replacement of the statewide agency network known as IdaNet.<sup>2</sup>

[see chart]

The multiple-vendor award was not challenged by Education Networks of America, Qwest or Verizon. The awards were not challenged by Syringa. Further, no vendor, including Syringa, challenged the State's reservation to possibly award the contract to more than one (1) vendor as a specification.<sup>3</sup>

The SBPOs did not require the delivery of services or obligate the State of Idaho to procure services or equipment, or to spend any certain amount of funds with either of the awarded vendors. The State and its agencies were allowed to purchase services from Education Networks of America and Qwest as best fit their individual needs.<sup>2</sup>

## **The Amendments**

The Department now had to determine the best method to proceed and concluded that one option would be for Qwest to assume responsibility for schools in its service area, while Syringa, through Education Networks of America, assumed responsibility for schools in the territory of Syringa and its member companies.<sup>4</sup>

Laura Hill, a Department employee, and Bob Collie of Education Networks of America were asked to discuss this geographic division with Syringa. They independently reported back that they had raised this possibility with Greg Lowe of Syringa and that he had responded that he would not participate, stating, "no, I'm getting it all."<sup>4</sup>

Idaho Code 67-5718A(3) provides that: "[w]here a contract for property has been awarded to two (2) or more bidders in accordance with this section, a state agency shall make purchases from the contractor whose terms and conditions regarding price, availability, support services and delivery are most advantageous to the agency."<sup>2</sup>

Syringa's recalcitrance in participating, combined with the Department's understanding of covered territory, available subcontract agreements, and the positive comments related to the Qwest backbone by the Request for Proposals evaluators, channeled the Department into the most advantageous path.<sup>4</sup>

On February 26, 2009, the Division of Purchasing issued separate statements in order to clarify the State's intended roles and responsibilities of the multiple award contractors for the implementation of the high schools phase of the IEN. The statements were respectively labeled "Amendment No. 1."<sup>4</sup>

## **Program Implementation**

The first orders under the IEN contracts were placed in July 2009, with the first school districts on-line by early September.

1. Letter from Merlyn W. Clark, Hawley Troxell Ennis & Hawley LLP, to Teresa Luna, Director of the Department of Administration, 7 Oct 2014
2. Letter from Merlyn W. Clark, Hawley Troxell Ennis & Hawley LLP, to Mel Blackwell, Vice President, Schools and Libraries Division, Universal Service Administrative Company, 24 Oct 2013
3. Memo from Deputy Attorney General Melissa Vandenberg to Kay Christensen, Division Chief, Contracts and Administrative Law Division, 31 Jul 2009
4. Affidavit of Greg Zickau, 22 Apr 2014

## Idaho Education Network Contracts in Operation

Understood ENA Subcontractors: CenturyLink – SBPO 1308; Frontier; TekHut, First Step; Ednetics; Custer Telephone					Understood Qwest/CenturyLink Subcontractors: Syringa; Frontier; Potlatch Telephone				
Totality of Services Available to Public Agencies: "Same or similar property" contracts per Idaho Code 67-5718A (1) (a - c)									
Contract with Education Networks of America (ENA): SBPO 1309					Contract with Qwest/CenturyLink: SBPO 1308				
Project Management	E-Rate Telecom	Non-Erate Telecom	Videoteleconference	Other Services	Project Management	E-Rate Telecom	Non-Erate Telecom	Videoteleconference	Other Services
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